IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 24648 of 2005

Between:

Pelleti Sreenivasulu Reddy

..... PETITIONER

AND

Chair-Person, Municipal Council,

Gundur Municipality Gudur,

Nellore District and 3 others

.....RESPONDENTS

ORDER:

Seeking a Mandamus, declaring the action of the respondents 1 and 2 in not scrutinizing and rejecting the applications of the ineligible candidates for co-option under the guise that Rule 3(e) of the Andhra Pradesh Municipal Councils/Nagar Panchayats (Co-option of Members having Special Knowledge or Experience in Municipal Administration) Rules, 1995, as illegal and arbitrary, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

It is stated that the elections for the Municipal Council Gudur were held on 24.09.2005 for 33 wards and results were announced on 26.09.2005, and the election to the post of Chairman and Vice-chairman were held on 30.09.2005 and the meeting of the Council was held on the same day. It is stated that as per the directions of the Election authority vide Circular dated 07.10.2005, the Municipal Council has to co-opt a member from the persons having special knowledge or experience in Municipal Administration as per rules enunciated in G.O.Ms.No.146 MA & UD, dated 18.03.1995. Consequently, a notification was published on 27.10.2005 in Eenadu District Edition, calling for the applications under Rule-5(1) of Co-Option Rules, 1995 from the persons having special knowledge or experience in Municipal Administration, within 7 days from 27.10.2005. Pursuant to the said notification, 12 applications were received. But the 2nd respondent without scrutinizing the applications as required under Rule-5, placed all the applications before the Chair Person and the Chair Person by notice dated 08.11.2005 called for a special meeting of the Municipal Counsels on 18.11.2005 at 2.30 P.M. Agenda for the meeting is to place the applications before the Council to co-opt a member from the 12 applicants. Petitioner and 4th respondents are one of the applicants.

It is the case of the petitioner that the 4th respondent does not possess requisite qualifications, and therefore, he made a representation by way of issuing a legal notice to the 2nd respondent on 15.11.2005, but no reply was given by the 2nd respondent. It is further stated that the 4th respondent is shown as a Voter at Sl.No.369 in Ward No.9, but in fact the name of one Naza Mullud Shaik is find place at Sl.No.369 in Ward No.9 but not the name of the 4th respondent, and therefore, it is contended that the 4th respondent is not a voter and his application shall not be considered for co-option.

I have perused the relevant papers filed along with the writ petition. Notification has been issued calling for applications from the eligible members for co-option. The Notification itself goes to show that the applicant shall furnish his name, father's name, sex, voter number and ward number as per voters list and his qualifications. Even though the petitioner states that the name of the 4th respondent is not find place at Sl.No.369 in the voters list, the petitioner has not filed any objections in written. On perusal of the legal notice said to have been issued by the petitioner dated 15.11.2005, it would go to show that the said legal notice was addressed to M/s.Premier Constructions Engineers, Nellore intimating them that the 4th respondent has applied for the co-option member stating that he is a works Manager in the said constructions and also requested the concerned as to whether 4th respondent has worked as works Manager in their constructions at any time. Except the said legal notice, I do not find any representation said to have been filed by the petitioner before the 2nd respondent on 15.11.2005, raising his objections about the candidature of the 4th respondent.

The learned standing counsel appearing for the respondents 1 to 3 submits that the petitioner got issued a notice on 16.11.2005 and for which a suitable reply notice was given by the respondents in Roc.No.1764/2005-Elec-E1, dated 17.11.2005 to the counsel of the petitioner, and hence, it cannot be said that the objection of the petitioner has not been considered.

The learned counsel for the petitioner submits that the co-opted member is not a counseller and there is no any alternative remedy to question the illegal acts of the respondents if an ineligible and unqualified person is co-opted as co-opted member of council. I am unable to agree with the contentions of the learned counsel for the

petitioner.

As per the Rules for Decision of Election Disputes, 1967, no election held under the Andhra Pradesh Municipalities Act, 1965, whether for a counsel, chairman or vice chairman, shall be called in question except by an election petition presented in accordance with the rules. If any person is co-opted and if such person is not eligible for such cadre and if he does not possess requisite qualifications, it is a matter to be decided in the election petition, but this Court cannot decide the disputed questions of fact. Therefore, I am of the opinion that no relief can be granted to the petitioner.

The Writ Petition is, accordingly, dismissed. No order as to costs.

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V.ESWARAIAH,J

Dated: 18.11.2005

Dsr